

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34275

STATE OF IDAHO,)	2008 Unpublished Opinion No. 649
)	
Plaintiff-Respondent,)	Filed: September 22, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
PAUL YBARRA,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order denying I.C.R. 35 motion to correct an illegal sentence, affirmed.

Paul Ybarra, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Paul Ybarra appeals from the district court's denial of his Rule 35 motion to correct an illegal sentence. We affirm.

I.

FACTS AND PROCEDURE

In 2001, Ybarra was charged with one count of delivery of a controlled substance, Idaho Code § 37-2732(a), one count of trafficking in 400 grams or more of methamphetamine, I.C. § 37-2732B(a)(4), and one count of trafficking in 28 grams or more of methamphetamine, I.C. § 37-2732B(a)(4).¹ Pursuant to a plea agreement, Ybarra pled guilty to trafficking in 28 grams or more of methamphetamine and waived his right to appeal. The district court imposed a

¹ Trafficking in 28 grams or more, but less than 200 grams of methamphetamine prescribes a mandatory minimum sentence of three years determinate imprisonment and a fine of not less than \$10,000. The maximum sentence to be imposed is up to life imprisonment and a fine of \$100,000. Idaho Code § 37-2732B(a)(4).

unified sentence of fifteen years imprisonment with eight years determinate, as well as a \$10,000 fine. Ybarra filed an appeal which was subsequently dismissed. *State v. Ybarra*, Docket No. 28239 (March 27, 2002). Ybarra then filed a Rule 35 motion for reduction of sentence, which the district court denied. He appealed the denial of his Rule 35 motion, but the Idaho Supreme Court dismissed his appeal. *State v. Ybarra*, Docket No. 30217 (January 12, 2004).

Ybarra filed another Rule 35 motion, arguing that the \$10,000 fine imposed upon him was illegal. The state objected, contending that Ybarra's claim was not suitable for a Rule 35 motion and was nothing more than a "plea for leniency." The district court denied Ybarra's motion on the grounds that it lacked jurisdiction to hear the matter because the motion did not involve a claim that his sentence was illegal and that Rule 35 permits defendant to file only one motion for a reduction of a sentence based on leniency. Ybarra now appeals.

II.

ANALYSIS

Ybarra alleges that the \$10,000 fine imposed by the trial court is illegal because he is indigent. Because he cannot afford to pay the fine, he argues, it is excessive and its imposition violates both the United States and Idaho constitutions which prohibit the imposition of excessive fines. Ybarra also argues that by prescribing mandatory minimum fines, the legislature illegally encroaches on judicial power and in doing so, violates the separation of powers doctrine.

A. Separation of Powers

We first dispense with Ybarra's contention that legislatively mandated minimum fines violate the separation of powers doctrine. Article V, Section 13 of the Idaho constitution prohibits the legislature from depriving the judicial branch of any power which "rightly pertains to it." Specifically, the section states:

The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a coordinate department of the government; but the legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with this Constitution, provided, however, that the legislature can provide mandatory minimum sentences for any crimes, and any sentence imposed shall be not less than the mandatory minimum sentence so provided. Any mandatory minimum sentence so imposed shall not be reduced.

Thus, the legislature explicitly retains the power to dictate mandatory minimum sentences for any crime, and it has done so by setting mandatory periods of incarceration and mandatory fines for certain offenses (as is seen in this case). Claims that such provisions violate the separation of powers doctrine have repeatedly been rejected by Idaho's appellate courts. *See State v. Pena-Reyes*, 131 Idaho 656, 656-57, 962 P.2d 1040, 1040-41 (1998); *State v. Alexander*, 138 Idaho 18, 56 P.3d 780 (Ct. App. 2002); *State v. Rogerson*, 132 Idaho 53, 55-56, 966 P.2d 53, 55-56 (Ct. App. 1998). Thus, where our courts have upheld the legislature's power to mandate minimum fines as part of its power to mandate minimum sentences, we conclude the mandatory minimum fine imposed in I.C. § 37-2732B(a)(4) does not represent a violation of the separation of powers doctrine under the Idaho constitution.

B. Legality of the Sentence

Idaho Criminal Rule 35 generally provides that, with the exception of illegal sentences, a motion to correct or modify a sentence must be made within 120 days of the entry of judgment. Ybarra characterizes his motion as one to correct an illegal sentence, arguing that the fine is illegal because it violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and Article I, Section 6 of the Idaho Constitution. The state argues that the motion is really only one seeking leniency which is time barred, and that for various reasons, his claim that the fine violates constitutional standards cannot properly be presented as a Rule 35 motion. For purposes of this opinion we will assume, without deciding, that Ybarra's constitutional challenge to his fine constitutes a claim that his sentence is illegal and can properly be presented through a Rule 35 motion.

All illegal sentence under Rule 35 is one in excess of a statutory provision or otherwise contrary to applicable law, and unlike a legal but allegedly excessive sentence, an illegal sentence may be corrected at any time. I.C.R. 35; *State v. Lee*, 116 Idaho 515, 516, 777 P.2d 737, 738 (Ct. App. 1989). The legality of a sentence is a question of law over which we exercise free review. *State v. Alsanea*, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003).

The \$10,000 fine imposed on Ybarra is the minimum fine allowed by statute for his offense. I.C. § 37-2732B(a)(4). Ybarra contends, however, that it constitutes an excessive fine prohibited by the Eighth Amendment and the Idaho Constitution because he is impoverished and cannot pay it. We disagree, for the United States Supreme Court has held that the alleged excessiveness of a fine is to be measured against the gravity of the defendant's offense, not

against the defendant's ability to pay. In *United States v. Bajakajian*, 524 U.S. 321, 334 (1998), the Court held that a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of the defendant's offense. In deciding upon this standard the Supreme Court emphasized two considerations. The first is that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Id.* at 336. The second is that "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.*²

Applying that standard here, we find no gross disproportionality. Ybarra's conviction is for trafficking in methamphetamine. This offense is a very grave one because of its far reaching consequences and the injury that it inflicts on others. As expressed by the legislature in the Idaho Drug Court Act, "Substance abuse is a contributing cause for much of the crime in Idaho, costs millions of dollars in productivity, contributes to the ever-increasing jail and prison populations and adversely impacts Idaho children." This offense is sufficiently serious that the legislatively prescribed minimum fine of \$10,000 is not grossly disproportional to the gravity of the crime. Therefore, Ybarra's constitutionality challenge fails.

III.

CONCLUSION

The district court did not err in denying Ybarra's Rule 35 motion to correct an illegal sentence. Therefore the district court's order is affirmed.

Judge LANSING and Judge PERRY **CONCUR.**

² The cases upon which Ybarra relies, *United States v. Corace*, 146 F.3d 51, 57 (2nd Cir. 1998); *United States v. Drinkwine*, 133 F.3d 203, 205 (2nd Cir. 1998); *United States v. Petty*, 132 F.3d 373, 383 (7th Cir. 1997); *United States v. Anderson*, 39 F.3d 331, 357-58 (D.C. Cir. 1994); *United States v. Granados*, 962 F.2d 767, 773-74 (8th Cir. 1992), which indicate that a court, in determining the amount of a fine, should take into account the defendant's ability to pay, are based upon provisions of the Federal Sentencing Guidelines, not the Excessive Fines Clause. Therefore, they are inapplicable.